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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

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THE PEOPLE,

Plaintiff and Respondent,

v.

CLINTON LENNARD SLOAN,

Defendant and Appellant.

C058543

(Super. Ct. No.  
06-2334)

An information charged defendant Clinton Lennard Sloan with one count of making a criminal threat. (Pen. Code, § 422.)<sup>1</sup> It alleged defendant had sustained a prior conviction for assault with a deadly weapon that was a strike under the "Three Strikes" law (§§ 667, subd. (e); 1170.12, subd. (c)) and was a serious felony under section 667, subdivision (a)(1). It also alleged defendant had served three prior prison terms for purposes of section 667.5, subdivision (b).

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<sup>1</sup> All subsequent undesignated section references are to the Penal Code.

On February 6, 2007, defendant admitted the prior conviction and prison term allegations.

Two days later, after the prosecution's first witness had spent the morning testifying, defense counsel declared a doubt as to defendant's competency, and the trial court suspended proceedings. Ultimately, the court found defendant incompetent and discharged the jury.

Nearly eight months later, the court reinstated criminal proceedings after the Napa State Hospital declared defendant competent to stand trial.

Trial commenced again on February 13, 2008. The jury found defendant guilty as charged. The court sentenced defendant to a prison term of 14 years, calculated as follows: the upper term of three years on the criminal threat count, doubled under the strike conviction, a consecutive five-year term on the prior serious felony conviction, and three one-year consecutive terms for the prior prison terms.

Defendant appeals and raises the following contentions:

1. No substantial evidence supports the criminal threat conviction;

2. The trial court erred when it admitted lay opinion testimony;

3. The trial court erred when it excluded testimony concerning defendant's inheritance that he claimed was relevant in questioning the prosecution witness's credibility; and

4. The trial court erred at sentencing by relying on his admissions to the prior conviction and prison terms because he made those admissions while he was incompetent to stand trial.

We affirm the judgment.

#### FACTS

Robert Bales, the victim in this case, lived with defendant's mother, Lulabelle Sloan, on a 14-acre ranch near Hornbrook, Siskiyou County. In May 2006, Bales picked defendant up after the latter's release from county jail and drove him back to the ranch. Defendant was going to live there temporarily until he could get his life in order. He had been in prison for 12 years and in a state mental institution for three years.

To assist defendant, Bales and Mrs. Sloan gave him money, bought him clothes, and provided transportation to his various medical and county aid appointments. They helped defendant fill out paperwork because he did not like doing it. Bales also gave defendant his pickup truck.

After living at the ranch a short while, defendant told Mrs. Sloan he was not comfortable living in the house with her and Bales. To make defendant comfortable, Bales borrowed a camp trailer from his son-in-law, and he parked it on the property for defendant to live in. About one month later, Mrs. Sloan purchased a camp trailer for defendant. Septic was not connected to the trailer, so Bales and Mrs. Sloan left the house key out on the porch so defendant could access the house when he needed to use the bathroom.

This living arrangement worked well for the first month. Defendant would assist with chores around the house. However, after that month, defendant's behavior started to change. He became hyper, and he would get angry quickly. His voice and facial expressions would change and his eyes would twitch when he got angry.

One time, defendant told Bales that someone was trying to crawl underneath his pickup and was going to poke him with a stick. Defendant said he was going to kick his ass. Similarly, defendant was angered by somebody on a horse. Again, defendant said he was going to kick his ass. Bales took these statements by defendant seriously.

In early August 2006, Bales cooked some fish for Mrs. Sloan for dinner. Defendant came into the house, and Bales asked him if he wanted some fish. He did, so Bales cooked it for him. Bales placed the plate of fish for defendant on the breakfast bar. Mrs. Bales asked defendant to sit down and have dinner by her. Defendant, however, picked up his plate and sat down at the dining room table. Bales went over to where defendant was sitting, picked up his plate, and while setting it down on the bar, said, "Come on, Clint. Come on over here . . . and have dinner with your mother like she asked you to do." Defendant jumped up, stomped out the back door, and went outside. He did not eat.

The next day, Bales was working on a couple of projects. He had arranged for a friend, Ron Ladd, to come over to the house to help him repair some eaves. He also had arranged for

another person, John Ebejer, to come over and repair a broken pump on the house's well. Ebejer arrived while Bales and Ladd were cutting wood on the back porch. Bales went to meet him. He passed defendant's trailer, and defendant was standing in the doorway. Bales asked defendant if he could go assist Ladd. Defendant angrily said no.

Bales met Ebejer, and he carried some of Ebejer's equipment to the well. When Bales walked by defendant's trailer again, defendant said, "You yanked my plate of food out from in front of me last night, and now you're asking me to help you? Fuck no, I won't help you." Bales kept on walking.

Later, Bales saw defendant standing by a nearby fence as Bales helped Ebejer with the pump. Defendant looked upset. Bales walked over to him and apologized for the incident the night before. He said, "If I offended you in any way, I'm sorry. I didn't mean to do anything like that." Bales offered to talk about it later, but defendant said nothing.

After Ebejer left, Bales went back to help Ladd with the eaves. He saw defendant up on a hill behind the house acting strangely. Defendant was going back and forth across the hillside yelling. Then defendant came down to the house. He told Bales he wanted to talk now while there were witnesses. Bales apologized again for his actions. Defendant was angry and replied, "That ain't fucking good enough." Bales said, "Do you mean . . . that I'm man enough to apologize to you, and you're telling me you're not going to accept it?" Defendant said,

"That's right. That's fucking right." Bales turned around and walked away. He had not seen defendant that angry before.

Later that day, a lighting storm arose, and Bales heard a strike very close to the house. He also heard defendant yell. Thinking defendant may have been hit by lightning, Bales ran outside to check on him. Bales expressed his concern to defendant, but defendant said nothing. Bales turned to go back in the house, and then he turned around to try one more time to reconcile. He said to defendant, "Let's drop this. Let's forget this thing. Let's just go on . . . ."

Defendant became angry and got right into Bales's face. He cussed at Bales, calling him a "no good son of a bitch." He accused Bales's generosity of "greasing [defendant's] ass, expecting him to drop down and give [Bales] a blow job." Defendant was about a foot away from Bales's face.

Bales could not believe what he was hearing. He thought defendant was trying to provoke him to hit defendant. Bales wanted "to get the hell away from him." He started backing up, but defendant kept cursing.

Then, in a loud voice, defendant told Bales, "And I'm telling you one thing. I'm watching you. I'm fucking watching you. I will take you out. I will tell you one thing. I will take you out, if you know what I mean, and I know you know what I mean. I will take you fucking out." As Bales headed back to the house, defendant yelled, "I'll tell you one other thing, too. You're a . . . smart son of a bitch."

Bales was scared. He thought defendant's statement meant defendant was going to kill him. He was relieved to be back at the house and that defendant had not followed him. He did not want to be around defendant in case he "went off again." He looked forward to Mrs. Sloan returning home from work within the next 45 minutes or so because her presence tended to prevent defendant from acting out. He kept an eye out for defendant, believing defendant wanted to kill him.

Bales testified he was afraid of defendant because of what he knew of defendant's history. For example, he was aware that about three years earlier, defendant's parole officer had come to the house to retrieve a urine sample from defendant, and defendant punched the officer in the mouth. About a week or so later, a swat team descended on the house, and defendant ended up in the Atascadero State Hospital.

Bales was aware of another incident years earlier where defendant stabbed a person while in a bar. This incident led to a prison term. Bales was also aware of an incident when defendant beat up a truck driver at a gas station for blinking his lights at him.

Defendant's parole officer had told Bales he did not like being around defendant, and that his office does not confront defendant with anything less than a full swat team.

Bales also was not in good physical condition. He injured his back and leg in an accident, resulting in the loss of a piece of his spine. He also had lost 40 to 50 percent of the

movement in his right arm due to rotator cuff surgery that went bad. He was not in any condition to strike back at defendant.

When Mrs. Sloan arrived home from work the day of the threat, defendant met her and told her not to go into the house because Bales would hurt her. She said Bales would never hurt her, and she went inside. Defendant did not respond.

That evening, Bales and Mrs. Sloan took a drive and discussed defendant's threat. Bales intended to call the police, but Mrs. Sloan persuaded him to wait. Defendant had an appointment with mental health a few days later, and Mrs. Sloan was convinced the doctor would send him back to Atascadero State Hospital where he could get help without having to go to prison.

Nonetheless, Bales did not sleep that night. The following night, Mrs. Sloan placed a couple of three-foot-long two-by-four boards beside their bed in case defendant came in.

The next day, Bales told Mrs. Sloan he did not feel comfortable around defendant. Because defendant had a key to the house, Bales feared he would "come in and plug me in the head in the middle of the night, or me and his mother." Bales decided to stay at one of the guest houses at his job site. Mrs. Sloan stayed at the house, but she propped a chair under her bedroom door so defendant could not get in.

Later that week, Mrs. Sloan took defendant to his scheduled appointment with a mental health doctor. The doctor, however, thought everything would be fine and he did not send defendant to a mental health facility. After leaving the facility, defendant became violently angry. He said, "If I had a gun, I



would blow my head off." Later that day, he told Mrs. Sloan he had hated his brother, Clay, for 15 years and he was going to hurt him bad when they next got into a fight. He also told Mrs. Sloan that she had not "had a whupping in a long time, and it was time that [she] had another whupping."

After hearing these statements by defendant, Mrs. Sloan decided to leave the house and go stay with Bales. She could not be at the house anymore because she felt it was dangerous. That night, she slept in a chair, and she left the next morning without defendant knowing.

When Mrs. Sloan informed Bales that defendant would not be leaving, Bales told her he would go to law enforcement. Bales thought it had been about seven days since defendant had threatened him. He and Mrs. Sloan met with a member of the county sheriff's department and reported what had happened. At that time, Bales was still afraid defendant might kill him. Deputies arrested defendant a few days later.

Even after defendant's arrest, Bales continued to lose sleep. He also lost more than 30 pounds, and he began taking medication for his nerves.

## DISCUSSION

### I

#### *Sufficiency of Evidence*

To prove defendant made a criminal threat in violation of section 422, the prosecution had to establish the following five elements: "(1) that the defendant 'willfully threaten[ed] to commit a crime which will result in death or great bodily injury

to another person,' (2) that the defendant made the threat 'with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,' (3) that the threat -- which may be 'made verbally, in writing, or by means of an electronic communication device' -- was '*on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,*' (4) that the threat *actually caused the person threatened 'to be in sustained fear for his or her own safety or for his or her immediate family's safety,'* and (5) that the threatened person's fear was 'reasonabl[e]' under the circumstances. [Citation.]" (*People v. Toledo* (2001) 26 Cal.4th 221, 227-228, italics added.)

Defendant claims insufficient evidence supports the third and fourth elements italicized above, that the threat conveyed an immediate prospect of execution, and that it actually caused Bales to be in sustained fear. He asserts Bales's decision to seek psychiatric intervention before calling police some seven days after the threat demonstrates as a matter of law the threat did not convey to Bales the immediate prospect of execution or put Bales in sustained fear. We disagree.

An alleged threat must be examined on its face and under its surrounding circumstances to determine if it meets the requirements of section 422. (*People v. Bolin* (1998) 18 Cal.4th 297, 339-340.) The surrounding circumstances include the parties' prior relationship, the manner in which the

communication was made, and the actions of the accused after making the communication. (*In re Ryan D.* (2002) 100 Cal.App.4th 854, 860.)

Moreover, the statute does not require an immediate ability to carry out the threat. (*People v. Lopez* (1999) 74 Cal.App.4th 675, 679.) Rather, the threat must be sufficiently unequivocal, unconditional, immediate, and specific to convey to the person threatened an immediate prospect, or possibility, of execution of the threat. A threat is not insufficient simply because it does not communicate a time or precise manner of execution. (*People v. Butler* (2000) 85 Cal.App.4th 745, 752.)

Substantial evidence supports the jury's determination, based on the threat's language and its surrounding circumstances, that the threat was conveyed with an immediate prospect of execution, the crime's third element. The Court of Appeal, First Appellate District, has defined the "immediate prospect of execution" requirement as follows: "How are we to understand the requirement that the prospect of execution be immediate, when, as we have seen, threats often have by their very nature some aspect of conditionality: A threat is made to convince the victim to do something 'or else.' In light of the analysis and reasoning articulated in . . . other cases, which place important emphasis on the effect the threatening words have on the victim, we understand the word 'immediate' to mean that degree of seriousness and imminence which is understood by the victim to be attached to the *future prospect* of the threat being carried out, should the conditions not be met." (*People*

*v. Melhado* (1998) 60 Cal.App.4th 1529, 1538, original italics, fn. omitted.)

Bales understood the threat to have been conveyed with an immediate prospect of execution. He was well aware of defendant's violent past. He also knew defendant had been threatening to commit acts of violence against various people. On the day of the threat, defendant was as angry as Bales had seen him. When defendant threatened to "take [Bales] out," Bales retreated to the house for safety for fear defendant might kill him. While in the house, he kept an eye out for defendant in case he came at him. He wanted to call the police when Mrs. Sloan came home, but she convinced him otherwise. He eventually moved out of the house, still fearing defendant would kill him. This is sufficient evidence that Bales believed defendant's threat was serious and its execution would be immediate if Bales angered defendant again. The evidence satisfied the third of section 422's five elements.

Substantial evidence also supported the jury's determination that defendant's threat placed Bales in a condition of sustained fear, the fourth element. "The phrase to 'cause[] that person reasonably to be in sustained fear for his or her own safety' has a subjective and an objective component. A victim must actually be in sustained fear, and the sustained fear must also be reasonable under the circumstances. [¶] Unlike the crime of robbery where the word 'fear' does not necessarily connote intimidation or fear as it means apprehension, the term 'sustained fear' is defined . . . as a

period of time 'that extends beyond what is momentary, fleeting, or transitory.'" (*In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1140, fn. and citation omitted.)

There is no doubt Bales was in sustained fear. He testified he was scared and he feared for his life. He continued to be in fear, so he moved out. The evidence also shows his state of fear was reasonable. Given his knowledge of defendant's past behavior and the intensity with which defendant made his threat, it was reasonable for Bales for fear for his life.

Bales's delay in reporting the threat to law enforcement does not overcome this showing of the threat's immediate prospect of execution or of Bales being in sustained fear. It was Mrs. Sloan who convinced Bales not to call authorities so that defendant's doctor would have the opportunity to place him in a mental health facility. Bales, however, remained afraid. He was unable to sleep, and eventually he moved out of the house for his safety. Substantial evidence thus supports the jury's determination that defendant's threat was conveyed with an immediate prospect of execution and it left Bales in a state of sustained fear.

## II

### *Opinion Testimony by Lay Witness*

Under direct examination by the prosecutor, Mrs. Sloan testified that she knew defendant threatened Bales even though she was not there, and she knew Bales was not lying when he told her about the incident. Defendant claims the court committed

prejudicial error in overruling his objection to this testimony. We disagree.

The trial court erred in admitting Mrs. Sloan's opinion testimony. A lay witness may not express an opinion on whether the alleged crime occurred or about the veracity of particular statements made by another person. (*People v. Melton* (1988) 44 Cal.3d 713, 744; *People v. Torres* (1995) 33 Cal.App.4th 37, 47-48.)

However, no miscarriage of justice occurred when the testimony was admitted. (*People v. Watson* (1956) 46 Cal.2d 818, 836-837.) Even if the testimony had not been admitted, there is no reasonable doubt defendant would have been convicted. The jury had before it ample evidence to convict without having to rely on Mrs. Sloan's two improper statements.

### III

#### *Evidence of Defendant's Inheritance*

Defendant claims the trial court denied him his right to present a defense when it refused to allow him to present evidence that Bales and Mrs. Sloan were biased against him because they stole an inheritance of his and wanted him in prison to ensure their financial gain. We disagree. The court did not abuse its discretion in refusing to admit the evidence.

#### *A. Additional background information*

According to an offer of proof, defendant inherited \$5,000 upon his father's death, and he buried the money at the ranch. After he went to prison in 2002, Bales found the money and dug it up. Mrs. Sloan placed the money into a bank account in her

name and in defendant's brother's name. Mrs. Sloan knew the money belonged to defendant, and she would have put it in an account in defendant's name had he not been in prison.

Defense counsel sought to introduce this evidence on cross-examination. He claimed the evidence was relevant to show Bales and Mrs. Sloan held a bias against defendant and had a motive to fabricate or embellish the evidence. By keeping defendant in prison, they would secure his money for themselves.

The prosecutor moved to exclude the evidence as unduly prejudicial under Evidence Code section 352. She argued the evidence had nothing to do with the evidence in this case and would confuse the jury. She also claimed the matter would consume an inordinate amount of time, as the prosecution would rebut it with evidence of all of the costs Bales and Mrs. Sloan incurred on defendant's behalf after his release from prison, such as the cost of the trailer, the value of the pickup, room and board, utilities, gas, even attorney fees.

The trial court granted the prosecutor's motion. It determined the evidence of these acts in 2002 was not relevant to defendant's actions in 2006. It also felt this evidence would concern a civil matter. It concluded that allowing the evidence would be unduly time consuming and misleading and would confuse the jury.

#### B. *Analysis*

Evidence may be excluded under Evidence Code section 352 if its probative value is "substantially outweighed by the probability that its admission would create substantial danger

of undue prejudice, of confusing the issues, or of misleading the jury.” (*People v. Harrison* (2005) 35 Cal.4th 208, 229.) We review the trial court’s ruling under Evidence Code section 352 for abuse of discretion. (*People v. Watson* (2008) 43 Cal.4th 652, 684.) An abuse of discretion occurs only where the trial court has exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Defendant claims the evidence was relevant as it called into question Bales’s and Mrs. Sloan’s credibility. He also argues the testimony and any rebuttal to it would have taken little time and would not have burdened the jury.

The trial court did not abuse its discretion in disallowing the evidence. It reasonably determined the evidence’s probative value was substantially outweighed by the impact it would have on the jury. The evidence was too tangentially related to the case to justify the digression it would create. The money was not even being held in Bales’s name, and Mrs. Sloan would acknowledge the money belonged to defendant. The court was well within its discretion when it disallowed the evidence.

We also reject defendant’s contention that the court’s action violated his constitutional right to present a defense and cross-examine witnesses. Application of the ordinary rules of evidence does not impermissibly infringe on a criminal defendant’s constitutional rights. (*People v. Kraft* (2000) 23 Cal.4th 978, 1035.)



#### IV

##### *Admissions of Prior Convictions*

Defendant claims the trial court erred when it enhanced his prison sentence based on the admissions to prior convictions he made in trial two days before proceedings were suspended to determine if he was competent to stand trial. We disagree. The admissions remained valid under the relevant statutory scheme because defendant failed to prove he was incompetent at the time he made the admissions.

##### *A. Additional background information*

Trial began on February 6, 2007, before the Hon. Robert F. Kaster. At that time, defendant admitted a prior conviction of assault with a deadly weapon that constituted a strike for purposes of the Three Strikes law (§§ 667, subd. (e); 1170.12, subd. (c)), and that constituted a prior serious felony for purposes of section 667, subdivision (a)(1). Defendant also admitted serving three prior prison terms for purposes of section 667.5, subdivision (b). The record discloses defendant stated he understood each allegation and admitted the truth of each.

The next day, February 7, 2007, a jury was selected for trial. The following day, February 8, 2007, the parties gave their opening statements and Bales provided his testimony.

After Bales's testimony on direct, counsel for defendant declared a doubt as to defendant's competency to continue. Up until that time, counsel believed defendant was able to assist and to control his behavior in the court room. Counsel was

aware of defendant's prior commitment to Atascadero State Hospital where he underwent counseling and began medication. Since being released, however, defendant had not been taking his medication. Their discussions of the case had been difficult because defendant would go off on tangents and get angry. Nonetheless, defendant had been very good about being diverted back to the situation at hand. Indeed, counsel and defendant had "always been on kind of the same page in terms of his defense."

However, Bales's testimony was very stressful for defendant. Twice during the testimony, defendant laughed out loud in a "very loud kind of sardonic-type laughter." After the first time, counsel passed defendant a note asking him not to do that. After the second time, counsel looked at defendant. Defendant's lips were moving, but he was not talking and no sound was coming out. It appeared to counsel that defendant was having a conversation with a nonexistent person.

The trial court granted defense counsel's motion, suspended proceedings, and appointed two examiners to evaluate defendant. At a later competency hearing, the court found defendant incompetent to stand trial and ordered the proceedings to continue to be suspended. Defendant was committed to Napa State Hospital on April 10, 2007.

Criminal proceedings resumed on November 27, 2007, after Napa State Hospital determined defendant was competent to stand trial.

The case came on for jury trial on February 13, 2008, before a different trial judge, the Hon. Laura J. Masunaga. Defendant was represented by new counsel.

The trial court determined the record of defendant's earlier admissions to the prior convictions was conclusive and the admissions had not been withdrawn. The court made a record of its decision as follows:

"The issue came up in terms of -- [defendant], you had previously admitted your prior felony convictions as set forth in the information and prior prison terms. You admitted to the truth of those allegations as well as the one count, 245(a)(1) of the Penal Code, was a strike and a serious felony, and those admissions were taken and the waiver of rights on February the 6th, 2007.

"Pursuant to Penal Code [section] 1025 and [*People v. Evans* (1960) 185 Cal.App.2d 331, and *People v. Tahtinen* (1958) 50 Cal.2d 127], that these prior admissions are conclusive in all subsequent proceedings unless they have been withdrawn by the consent of the court.

"Those admissions have not been withdrawn, and I think as a -- the law of the case means that the people have no further burden of proof so far as those issues are concerned. And I believe that's [defense counsel's] understanding and counsel for the People's understanding as well, but I just wanted to put that on the record to clarify that."

Neither defense counsel nor the prosecutor objected to the court's finding.

B. *Analysis*

Defendant claims that if he was incompetent to stand trial on February 8, 2007, he was similarly incompetent to enter prior conviction admissions two days earlier. He asserts state law contemplates that a declaration of doubt as to the competency of a defendant standing trial, combined with a subsequent finding of incompetency, operate to render any actions taken during that trial null and void. He is incorrect.

Upon the trial court's declaration of doubt as to competency, the proceedings were suspended, "but they remained exactly as they were until the question of the defendant's sanity was determined. Section 1368 and section 1370 of the Penal Code, leave no room for doubt that the legislature intended that at whatever point in the trial the doubt should arise, the proceedings should stand suspended until a trial of that issue, but when the defendant should be found sane they should be taken up at that point and the case proceed. . . . The whole tenor is that trial is interrupted but that which has gone before is not vacated and set for naught." (*People v. Rothrock* (1936) 8 Cal.2d 21, 24.)

When a trial earlier suspended due to the defendant's incompetence is resumed, the defendant is presumed to have been competent up until his competence was doubted by the trial court, and all that took place until that time is presumed valid. Defendant has the burden to show he was not competent during the earlier stages. (*People v. Smith* (2003) 110 Cal.App.4th 492, 502-506.)

"The statutory procedure establishes a discernible point at which evidence of incompetence is sufficient to halt proceedings and renders further proceedings constitutionally invalid. Under the statute, the question of incompetency arises the moment the court expresses a doubt as to a defendant's competency (§ 1368, subd. (a)) and is based on the consideration of all the relevant circumstances, including the behavior of the defendant and the comments of counsel. [Citation.] In the absence of evidence sufficient to find incompetency as a matter of law, or a retroactive finding of incompetency by the trial court, we cannot find the later incompetency finding under section 1369 reaches back to some unknown and unidentified point in earlier proceedings. Doing so would create an unmanageable and unjustified quagmire for appellate and trial courts alike." (*People v. Smith, supra*, 110 Cal.App.4th at p. 505, fn. omitted.)

Here, defendant had the burden of showing he was not competent when he entered his admissions, and he failed to meet that burden. Despite having mental illness and wanting to discuss tangents, defendant was assisting counsel with the case, and he and his attorney were in agreement on how the defense should proceed. Nothing in the record suggests he did not understand the admissions he was making, as they were clearly explained by the trial court and agreed to by him. It was not until after he heard Bales's testimony two days later that doubts about his competency surfaced. Indeed, when the court

confirmed that his prior admissions were still valid and applicable, defense counsel did not object.

"There is no denying that the timeframe between proceedings occurring when a defendant is presumed competent and the finding of doubt as to competency can be a very brief time period. But proximity of time alone is not determinative; our finding rests on a failure of proof." (*People v. Smith, supra*, 110 Cal.App.4th at p. 505.) Because defendant did not show he was incompetent at the time he made the admissions, the trial court did not err when it relied upon his admissions to enhance his sentence.

DISPOSITION

The judgment is affirmed.

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NICHOLSON, J.

We concur:

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SIMS, Acting P. J.

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BUTZ, J.